IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No. 7143 OF 2005.

Yeshwant Sahakari Kamgar Bank Ltd.
(Not known as Brahmadev Dada Mane
Sahakari Bank Limited, Solapur),
THROUGH: its Authorised Signatory
ANAND BANDOPANT BADWE
..Petitioner.

Versus.

1. The Assistant Provident Fund
Commr.,Employees Provident
Fund Organisation, Sub
Regional Office, Solapur.

2. The Union of India,
Through:- Secretary,
Department of Labour. ..Respondents.

Mr. Surel S. Shah, Advocate for the Petitioner.

Mr. Suresh Kumar Advocate for the Respondent No.1.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:11TH DECEMBER, 2006.

ORAL JUDGMENT.

1. Heard.

2. Rule. By consent, the Rule is made returnable forthwith.

3. The petitioner challenges order dated

6th May, 2005 passed by the Presiding Officer of the Employees Provident Funds Appellate Tribunal in A.T.A. No. 480(9)/2003. By the impugned order the appeal filed by the petitioner has been rejected solely on the ground that it was barred by law of Limitation, while refusing to condone the delay.

4. Few facts relevant for the decision in the matter are that on 29th June, 2000, the petitioner was allotted Code Number under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 giving retrospective effect from 1st October, 1997. The directions issued by the Authorities under the said Act were complied with by the petitioner on 1st October, 2001. Further, the respondents herein issued an order dated 19th December, 2001 calling upon the petitioner to pay an amount of Rs. 4,09,022/- towards the interest under the provisions of Section 7(Q) of the said Act. The petitioner informed the respondent No.1 about payment of amount of interest under the letter dated 4th February, 2002. Thereafter, the respondent No.1 issued notice under Section 7-A of the said Act on

3rd June, 2002 calling upon the petitioner to show cause as to why the damages should not be imposed under Section 14-B of the said Act. The petitioner submitted its reply dated 24th June, 2002 and requested for waiver of damages. By an order dated 22nd July, 2002 the respondent no.1 directed the petitioner to pay an amount of Rs. 12,37,155/- as the damages. The petitioner sought to challenge the said order dated 22nd July, 2002 by filing a suit. The suit was filed on 9th September, 2002. A preliminary objection was sought to be raised in terms of Section 9A of the Code of Civil Procedure by the respondent no.1 in the said suit and the same was decided after hearing the parties by a speaking order dated 17th March, 2003,while directing the petitioner to file an application in terms of Rule 10A (2)(a) of Order VII of the C.P.C. Aggrieved by the said order, the petitioner filed Writ Petition in this Court on 24th April, 2003 which came to be rejected on 16th June, 2003 on account of availability of the alternative efficacious remedy to the petitioner in the form of Appeal against the order dated 22nd July, 2002. The petitioner thereafter filed application in terms of Order

VII Rule 10A (2)(a) before the Civil Court on 25th June, 2003 and under the order dated 30th June, 2003 the Civil Court returned the plaint to the petitioner to enable the petitioner to file an appeal. The petitioner filed the Appeal on 15th July, 2003. Though the Appeal, was not accompanied by any separate application for condonation of delay, in the memo of appeal itself, the appellant stated that the petitioner was pursuing with the remedy of civil suit during the intervening period. The Tribunal, however, rejected the appeal by the impugned order holding that the Tribunal cannot extend the period of limitation beyond 120 days from the date of the impugned order in terms of Rule 7 (2) of the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997 (hereinafter called as "the said Rules".

5. Referring to Section 29 of the Limitation Act, 1963 and placing reliance upon the decisions of the Division Bench of Nagpur High Court in the matter of **Sitaram Nanasa and others Vs. Chunnilalsa Bhagchandsa Kalal, A.I.R. (31), 1944 Nagpur 155, and of the Apex Court in Kaushalya Rani Vs. Gopal Singh,**

A.I.R. 1964 Supreme Court 260, the learned Advocate for the petitioner submitted that the petitioner was bonafide pursuing the matter before the Civil Court as well as before this Court and, therefore, there was delay in approaching the Tribunal and the same was explained in the memo of Appeal and therefore, the Tribunal ought to have considered that the petitioner was entitled for the benefit of the provisions of Section 14 of the Limitation Act, 1963 and on such benefit being granted the appeal was within the period of 120 days from the date of the impugned order and, therefore, there being sufficient cause for filing the appeal beyond the period of 60 days under the Rule 7 (2) of the said Rules, the Tribunal ought not to have rejected the appeal in limini by the impugned order. The learned Advocate for the respondent no.1, on the other hand, submitted that considering the provisions of Rule 7 (2) of the said Rules, no fault can be found with the impugned order and the petitioner has not disclosed any fact which could entitle the petitioner to avail the benefit of Section 14 of the Limitation Act.

6. Section 14 (2) of the Limitation Act, 1963 provides that in computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. Section 29 (2) of the Limitation Act provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

7. Rule 7 (2) of the said Rules provides that any person aggrieved by an order passed by any Authority under the Act, may within 60 days from the date of issuance of the order, prefer an appeal to the Tribunal,provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

8. In view of the fact that Rule 7 of the said Rules prescribes the specific period for filing of an appeal under the said Act, which is different from the provisions comprised in the Schedule to the Limitation Act regarding the period of filing of the appeals, the learned Advocate for the petitioner is justified in contending that it is a special law in relation to the period of limitation prescribed for the appeals to be filed under the said Act. The Apex Court in **Kaushalya Rani's case (supra)** had clearly held:-

> . "A 'special law' means a law enacted for special case, in special circumstances, in contradistinction to the general rules of the law laid down,

> as applicable generally to all cases with which procedure for the trial of criminal cases, generally; but if it lays down any bar of time in respect of special cases in special circumstances like those contemplated by S. 417 (3) and (4) read together it will be a special law contained within the general law laying down the general rules of limitation applicable to all cases dealt with by the Act."

9. The Limitation Act is a general law laying general rules applicable to all the cases dealt with under the Limitation Act. But there may be instances of a special law of limitation laid down in other statutes, though such statutes may not be dealing with the law of limitation. Considering the same, therefore, the provision of law under Rule 7 of the said Rules which have been enacted in exercise of powers conferred under Section 21(1) of the said Act, is to be construed as a special law of limitation in relation to the appeals filed under the said Act. Obviously, therefore, considering the provisions of Section 29 (2) of the Limitation Act, the

provisions of Section 14 of the Limitation Act would apply to the cases arising under the said Act also.

10. As already observed above, undisputedly, fact that after passing the impugned order, the petitioner sought to challenge the same by filing a civil suit on 9th September, 2002 wherein the respondent no.1 herein raised a preliminary objection in terms of Section 9A of the C.P.C. about lack of jurisdiction to the Civil Court to deal with the matter and the Civil Court after hearing the parties by its order dated 17th March, 2003 upheld the objection and directed the petitioner to take appropriate steps in terms of Rule 10A (2) (a) of Order VII of the C.P.C. The said Rule 10-A (2) provides that where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court specifying the Court in which he proposes to present the plaint after its return, praying that the Court may fix a date for the appearance of the parties in the said Court, and request that the notice of the date so fixed may be given to him and to the other party. Sub Rule (1) of Rule 10A of the C.P.C.

provides that where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

11. It is not in dispute that the order dated 17th March, 2003 was in terms of the provisions of Order VII Rule 10 (1) of the C.P.C. It is also not in dispute, nor it can be disputed, that there is no period of limitation prescribed for filing an application under Sub Rule (2) of Rule 10A of Order VII of the C.P.C. It is also an undisputed fact that under Order dated 17th March, 2003, the Civil Court had not fixed any period for filing an application in terms of Sub Rule (2) of Rule 10A of Order VII of the C.P.C. As already seen above, aggrieved by the order passed by the Civil Court under Section 9A read with Rule 10A of the C.P.C. the petitioner had filed Writ Petition before this Court on 24th April, 2003 which came to be rejected on 16th of June, 2003 in view of the fact that the petitioner can avail alternative efficacious remedy in the form of Appeal. The petitioner, thereafter, filed an

application in terms of Order VII Rule 10A (2) of the C.P.C. on 25th June, 2003 and by an order dated 30th June, 2003 the Civil Court returned the plaint and thereupon the petitioner filed the appeal on 15th July, 2003.

12. In the process of pursuing the matter before the Civil Court by way of a Civil Suit and before this Court by way of a Writ Petition, the period of 117 days was lost between 22nd July, 2002 and the date of filing of the Appeal on 15th July, 2003. In other words, the Appeal was filed within 15 days from the date of return of the plaint. The period which was spent between the date of passing of the order dated 22nd July, 2002 and the date of the filing of the suit was of 48 days. Considering the same, the appeal was in fact filed within 63 days, i.e. 48 days plus 15 days. In other words, there was delay of three days in filing the Appeal.

13. The detail analysis of the period spent in pursuing the another remedy in the nature of the civil suit and writ petition would, therefore, disclose that though as a whole,

the petitioner took nearly 11 months and 23 days in filing the appeal, the period of 9 months and 20 days therefrom was spent in pursuing the remedy of the civil suit and the writ petition.

14. It is sought to be contended on behalf of the respondent no.1 that the Tribunal is not empowered to condone the delay so spent in view of the provisions comprised under Rule 7(2) of the said Rules. As already seen above, once it is clear that the provisions of Section 29 of the Limitation Act are applicable to such proceedings before the Tribunal under the said Act and Rules, the contention sought to be raised on behalf of the respondent about absence of jurisdiction to the Tribunal to condone such delay by applying the provisions of Section 14 of the Limitation Act, cannot be accepted. Infact, Section 14 is not in relation to condonation of delay, but it provides exclusion of period on the ground of limitation. Section 14 of the Limitation Act specifically provides for exclusion of the period spent in proceeding bonafide in a court without jurisdiction. As already seen above, the Civil Court had sought

to return the plaint on the ground of absence of jurisdiction to entertain the same. It was returned on 30th June, 2003 and the appeal was filed on 15th July, 2003. Considering the same, therefore, the Tribunal ought to have considered that the period spent from 9th September, 2002 till 30th June, 2003 was liable to be excluded for the purpose of calculating the period of limitation and having so excluded it was clear that the appeal was filed within the period of 63 days and consequently there was delay of only three days in filing the appeal. Undisputedly the Tribunal has power to condone the delay to the extent of 60 days in terms of Rule 7 of the said Rules itself. In the facts and circumstances of the case, it cannot be said that the petitioner had failed to make out a sufficient cause for condoning delay of three days in filing the appeal. Indeed, the averments in the memo of appeal clearly disclose that the petitioner was pursuing with the suit before the Civil Court which had no jurisdiction to entertain the suit and having pursued the remedy with all seriousness and having failed therein, the petitioner obtained necessary order in terms of Order VII Rule 10A

(2) of the C.P.C. and within 15 days thereafter filed the appeal. Considering the fact that the petitioner was pursuing the matter with all seriousness, it cannot be said that the petitioner had failed to make out a case for exclusion of the said period and further a sufficient cause for condoning delay of three days in filing the appeal.

15. For the reasons stated above, therefore, the impugned order cannot be sustained and is liable to be set aside and the prayer for condonation of delay ought to be allowed and the appeal will have to be decided on merits. In this view of the matter, the petition succeeds. The impugned order is quashed and set aside. Delay in filing the appeal is condoned. The Tribunal to consider the appeal on merits in terms of the provisions of law.

16. The rule is made absolute in above terms with no order as to costs.

[R.M.S.KHANDEPARKAR,J]